

# Court of Appeals, State of Michigan

## ORDER

Roberta Walden v Michigan Consolidated Gas Co

Docket No. 281164

LC No. 07-705741-AV

Kurtis T. Wilder  
Presiding Judge

Brian K. Zahra

Kirsten Frank Kelly  
Judges

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The motion for immediate consideration is GRANTED.

The Court orders, pursuant to MCR 7.205(D)(2), that the circuit court's September 21, 2007 order is VACATED. Generally speaking, attorney fees may only be awarded as taxable costs where specifically authorized by statute or court rule. *Broadway Coney Island Inc v Commercial Union Insurance Co*, 217 Mich App 109, 116; 550 NW2d 838 (1996). In this case, the circuit court relied upon authority cited by plaintiff for the proposition that an award of attorney fees was proper because plaintiff was the "prevailing party" on appeal. However, the authority cited by plaintiff either did not specifically authorize an award of attorney fees as costs to a prevailing party on appeal, or was inapplicable to these proceedings. Consequently, the circuit court's grant of attorney fees as costs was unsupported by valid authority and therefore erroneous. In regard to the other expenses awarded as costs by the circuit court, not every "expense" incurred by the prevailing party may be recovered against the opposing party. *Beach v State Farm Mutual Automobile Insurance Company* 216 Mich App 612, 621; 550 NW2d 580 (1996). The prevailing party cannot recover costs where there exists no statutory authority for awarding them. *Id.* at 621. In this case, plaintiff offered no authority for the recovery of mileage and parking expenses, and we question whether all of the copy expenses requested by plaintiff are authorized. As the prevailing party in the circuit court appeal, plaintiff is clearly entitled to recover "costs." MCR 7.101(O). However, only "costs" specifically authorized by statute may be recovered.

This case is REMANDED to circuit court for further proceedings consistent with this order. The circuit court shall, among other things, reassess plaintiff's request for costs and only award those costs with statutory authorization. We do not retain jurisdiction. This order shall have immediate effect. MCR 7.215(F)(2).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

NOV 19 2007

Date

*Sandra Schultz Mengel*  
Chief Clerk